1. The evasive way in which she answered questions in cross-examination even after I had, in case there had been any misunderstanding in interpretation, had the questions been rephrased in more simple language and translated to her, such evasiveness becoming so bad that in her own interests I was compelled to adjourn for 10 minutes during her cross-examination and suggest to her counsel that they might take the opportunity of advising her that her evasiveness, if persisted in, must damage her credibility as a witness. Notwithstanding this, as is obvious in the Notes of Evidence, she continued to be extremely evasive and on some occasions made no attempt to answer the question put to her.

2. The omission from her pleadings, both original and amended, of any reference to the notice of termination of contract being given on the express request of the plaintiff, a matter upon which both she and her witness relied on hearing.

3. Her sworn statement in the Statement of Claim in Civil Suit 15/53 that at the time of filing such Statement of Claim, namely 2nd July, 1953, all the machinery hired to Yong Hon Fa and Teck Leong Mining Company Limited was beyond repair and valueless, as a result of which she claimed the full value of the machinery. This statement become extremely pertinent since she had in her evidence stated that the only serviceable machinery and scrap iron on the Concession was what had been hired to the defendants in Civil Suit 15/53 and in respect of which she had claimed damages.

4. The report of Dinham which I admitted under section 32(ii) of the Evidence Ordinance since she herself had admitted the man could not be traced. In my opinion the statement in this Report that certain items could not be found by Dinham on the occasion when she admits in her evidence Dinham inspected the Concession for the purpose of marking the serviceable machinery and the fact No. 5 bungalow was destroyed before Dinham's report completely destroys her credit when she said in her evidence before me that the machinery in respect of which she claimed damages in this Suit had been marked with a cross in her presence."

I am not in a position to comment on the reference to Civil Suit 15/53, but I can certainly find no fault whatever with the learned Judge's other reasons. In particular, on referring to Dinham's report I feel compelled to agree that this report destroyed the appellant's credit in certain respects for the reasons stated in the judgment.

In my view the learned trial Judge came to the correct findings and conclusions from the evidence. I cannot agree as suggested by appellant's counsel that he drew unfavourable inferences against the appellant unjustified by the evidence or that he misdirected himself in any way.

It is with regard to the amount of damages awarded to the respondent that I must regretfully part company with Neal J.

I agree that the respondent is entitled to the return of the deposit of $10,000 made when the agreement was executed. The facts were not in dispute with regard to his claim for the return of advances amounting to $12,600 from which he agreed that there should be deducted $5,626, the value of scrap of which he had taken delivery. I think he is clearly entitled to recover under this head. There was, however, no evidence whatever that I can find to support his claim for travelling, board, subsistence and other expenses amounting to $2,888.92 and the $2,000 claimed as liquidated damages in terms of the agreement had been waived.

Nor can I find any evidence to support respondent's claim for $40,000 general damages which Neal J. allowed. The respondent produced no evidence to show what damage he had actually suffered by reason of the termination of the agreement. In my view in the complete absence of any proof of damage the respondent was not entitled to recover anything under this head.

I would therefore dismiss that part of the appeal which relates to the dismissal of the counter-claim. I would allow the appeal as regards the claim by reducing the amount of damages to $16,974 ($10,000 + $6,974).

I think the respondent is entitled to costs and I would allow him 25% of the costs of the appeal.

Good J.A.: I agree with the conclusions reached by My Lords the Chief Justice and Hill J.A. As to the reasons for these conclusions, I had the benefit of reading My Lords' judgments before they were delivered, and I found that the ground had been so fully covered that I have nothing to add. I would concur in making the orders proposed by My Lords.

Order accordingly.

Solicitors: *S. Seenivasagam & Sons; Wong, Paramjothy & Goh.*

SEENIVASAN & ANOR. v. LIM YEW SENG

[C. A. (Thomson C.J., Hill and Good JJ. A.) April 20, 1960]

[K. L. — F.M. Civil Appeal No. 10 of 1960]

Damages — Quantum — Running-down cases — Civil Law Ordinance, 1956.

Per Curiam: "There can be no question of standardizing damages in these running-down cases coming under the Civil Law Ordinance. Nevertheless we are endeavouring to scrutinize such of them as come before us on the same principles. That is in the benefit of the public as a whole because obviously if Insurance companies and practitioners have some idea as to how these cases will ultimately be dealt with here it should facilitate settlements."

COURT OF APPEAL.

V. C. George for the appellants.

Kam Woon Wah for the respondent.

Thomson C.J. (delivering oral judgment): This is an appeal from a decision of Adams J., in a running-down case in which the wife of the respondent met her death.

The appeal is concerned only with the *quantum* of damages awarded by the learned Judge.

The respondent was the husband of the deceased woman and is the administrator of her estate. He sued as administrator and for himself and the minor children of the deceased under the provisions of the Civil Law Ordinance.

At the trial Mr. Justice Adams awarded damages as follows. He awarded $1,500 for funeral expenses, $3,500 for loss of expectation of life and a sum of $23,200 for loss of support.

That latter sum was to be distributed among the husband and the children of the deceased in proportions specified in his judgment.

Before us that award of damages has been criticised as excessive and in our opinion it erred in two respects.

In the first place it failed to take into account the value of the accelerated succession accruing to the respondent himself in respect of some $7,000 which the deceased woman (who died intestate) had in the Bank and in the second place it erred because there was a serious miscalculation in respect of the damages for loss of support.

We therefore allow the appeal to this extent. We will set aside the award of damages as assessed by the learned trial Judge and will substitute for it the following.

In the first place we will allow $1,500 for funeral expenses which is the amount awarded by the trial Judge.

In the second place we will award $3,500 for loss of expectation of life. That, again, is the amount awarded by the learned trial Judge and indeed, as has been said elsewhere, it has become almost a conventional award in these cases.

In respect of the loss of support we will award a total sum of $6,290. We have arrived at this sum in the following way. We have accepted the trial Judge's figures (which have not been seriously attacked) that the monthly value of the loss of support was $125 and that the deceased's natural expectation of life was 15 years but that should be reduced to a conventional expectation of life of 12 years to make allowance for the various relevant contingencies. On these figures, as a matter of arithmetic 12 years' purchase of $125 a month comes to $13,290. From that fall to be deducted two sums, one is the damages awarded in respect of loss of expectation of life which will go to the respondent himself and the other is something in respect of the respondent's accelerated succession to the amount of $7,000 which is lying in the Bank to the credit of the deceased woman's estate. The present value of that is $3,500, assuming a natural expectation of life of 15 years. That makes a total of $7,000 to be deducted from the estimated value of the support which has been lost and it must all be deducted from the respondent's share because he is the sole beneficiary of the estate. Deducting that sum of $7,000 there is a balance of $6,290 and we think that this should be dealt with by dividing it among the children in the proportions set out by Mr. Justice Adams in his judgment.

There will, therefore, be substituted for the judgment in the High Court judgment for $11,290 made up as I have described, $6,290 of that sum to be apportioned among the children as was done by Mr. Justice Adams. The appellant will have to have the costs of this appeal and his deposit will be paid out to him.

Perhaps I should add that there can be no question of standardizing damages in these running-down cases coming under the Civil Law Ordinance. Nevertheless we are endeavouring to scrutinize such of them as come before us on the same principles. That is in the benefit of the public as a whole because obviously if Insurance companies and practitioners have some idea as to how these cases will ultimately be dealt with here it should facilitate settlements.

Hill and **Good JJ.A.** concurred.

Appeal allowed.

Solicitors: *George & Khoo; Kam Woon Wah & Co.*

YEO TIN SANG v. LIM CHOO KEE

[C. A. (Thomson C.J., Hill and Good JJ. A.) May 16, 1960]

[J. B. — F.M. Civil Appeal No. 48 of 1959]

Principal and Agent — Injury to 3rd party by negligence of agent — Liability of principal.

Where injury or loss is caused to a third person by the wrongful act of an agent who is acting within the scope of his authority, the principal is liable jointly and severally with the agent.

COURT OF APPEAL, appeal from the decision of Neal J.

The plaintiff (respondent) in this case alleged that on the morning of May 16, 1957 he was travelling towards Singapore in a motor car owned by the appellant and driven by one Lim who was either the agent or servant of the appellant or was driving with his permission. He also alleged that the said Lim drove the vehicle in a negligent manner in consequence of which the vehicle went into a drain on its wrong side of the road and overturned, and as a result of which accident he suffered injuries including a fracture of his right hand. He claimed special damages of $300 for medical and transport expense, $1,750 for loss of earning for 5 months, and general damages in the sum of $20,000. In his defence the appellant denied that the motor car was driven by Lim as his servant or agent as alleged, and that he had no interest or concern in the journey undertaken by Lim and the passengers in the car, nor had he any control of the car thereon.

At the trial evidence was also given that the respondent had hired the car in which they were travelling from the appellant and that he had undertaken to pay $30 per day for hiring the car and the driver, the fare having to be paid to the driver at the conclusion of the trip. In cross-examination the appellant made no attack on respondent's evidence as regards the negligent driving of Lim, but he concentrated on the evidence as to hiring and the damages suffered by the respondent. His version of the circumstances under which Lim came to be driving his car was that he was sick at the time the car was borrowed, that Lim had approached his father for the loan thereof and the father in turn came to the house to obtain his consent to the use of the car by Lim to go to one or two places.

The learned trial Judge found as facts: (1) the appellant hired the motor car to the respondent for the purposes of a trip to Singapore; (2) the appellant appointed him as his agent for the purpose of that trip; (3) the accident was caused by the negligence of Lim; and disallowed special damages because the respondent could have obtained treatment at a nearer hospital instead of having to travel, allowed $800 for loss of earning and general damages $3000.

C. Paramjothy for the appellant.

R. Murugason for the respondent.

Thomson C.J. (delivering oral judgment): For myself I will start my consideration